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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

TAD SCHLATRE, Individually and on Behalf of All Others Similarly Situated,

Plaintiff,

v.

MARATHON DIGITAL HOLDINGS, INC. f/k/a MARATHON PATENT GROUP, INC., MERRICK D. OKAMOTO, FREDERICK G. THIEL, and SIMEON SALZMAN,

Defendants.

Case No. 2:21-cv-02209-RFB-NJK

PATHMA VENASITHAMBY'S REPLY IN SUPPORT OF HIS MOTION FOR APPOINTMENT AS LEAD PLAINTIFF

Pathma Venasithamby ("Venasithamby") respectfully submits this reply memorandum of further support of his motion for lead plaintiff and in further opposition to the competing motions for lead plaintiff.

Four movants filed further responses in support of their lead plaintiff motions: Cory Jay Wiedel ("Weidel"), Carlos Marina ("Marina"), Venasithamby, and Evan Dana ("Dana"). As detailed in Venasithamby's opposition memorandum, all three of other movants are inadequate or subject to unique defenses related to the timing of their purchases, and/or their failure to file accurate loss charts and certifications with the Court. Dkt. No. 18 at 2-4. As such, their motions should be denied.

Additionally, Dana's motion should also be denied for the independent reason that it was abandoned. On March 1, 2022, Dana filed a "response" effectively conceding that another movant (Marina) should be appointed, thereby removing himself from consideration. Dkt. No. 17 at 1 ("it appears that Mr. Marina possesses the 'largest financial interest in the relief sought by the class' as required by the PSLRA and otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure."). As such, he has abandoned his motion and can no longer be considered. *See Leibs v. Supreme Indus., Inc.*, No. 16-cv-08230, 2017 WL 457183, at *2 (C.D. Cal. Jan. 31, 2017) ("Gabel does not oppose appointment of Fishman as the lead plaintiff in this action. The Court therefore DENIES as moot Gabel's motion for appointment as lead plaintiff and for approval of counsel."); *Knight v. CytomX Therapeutics, Inc.*, No. 20-cv-03432, 2020 WL 6784189, at *1 (N.D. Cal. Nov. 18, 2020) (not considering the motion of a movant who filed a notice of non-opposition which rendered his motion moot); *City of Grand Rapids Gen. Ret. Sys. v. Bayer Aktiengesellschaft*, No. 20-cv-04737, 2020 WL 6255412, at *1 (N.D. Cal. Oct. 21, 2020) ("The former coalition has withdrawn its motion and the latter has filed a notice of non-opposition. As a result, the Pension Fund Investors' motion is unopposed.").

In contrast to the other flawed candidates, Venasithamby is not aware of any unique defenses that could be raised against him that would render him inadequate to represent the Class—nor have

the competing movants provided evidence of any. *See* Dkt. Nos. 16, 17, 19.[1] Additionally, while Wiedel only purchased shares on the last day of the Class Period when the fraud may have been already disclosed, *see* Dkt. No. 18 at 2, Venasithamby purchased shares both before and on the last day of the Class Period, *see* Dkt. No. 14-3. As such, if the Court ultimately determines that the announcement constituted a full corrective disclosure, Venasithamby would still have standing but Wiedel may not. Moreover, the fact that Venasithamby bought both before and on the final date makes him an ideal candidate since his interests are aligned with both parts of the class – whereas the other movants' interests would only be aligned with one section of the class (either those who bought before the final date or those who bought on the final date but arguably before the corrective disclosure).

In sum, since Venasithamby is the bona fide movant with the largest financial interest that satisfies Rule 23, he is the most is the presumptively "most adequate plaintiff." 15 U.S.C. § 78u-4(a)(3)(B)(iii). Because the presumption has not been – and cannot be – rebutted, Venasithamby should be appointed lead plaintiff, and his selection of lead counsel should be approved.

[1] "[I]t is improper for a party to raise a new argument in a reply brief." *United States v. Boyce,* 148 F.Supp.2d 1069, 1085 (S.D.Cal.2001) *aff'd,* 36 F. App'x 612 (9th Cir.2002) (*citing United States v. Bohn,* 956 F.2d 208, 209 (9th Cir.1992) In the event, that one of the competing movants attempts to attack Venasithamby for the first time on reply, the Court should refuse to consider the new matters. *Koerner v. Grigas,* 328 F.3d 1039, 1048 (9th Cir.2003) ("[t]he district court need not consider arguments raised for the first time in a reply brief").

DATED: March 8, 2022

Respectfully submitted,

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Counsel for Plaintiff and Lead Plaintiff Movant Pathma Venasithamby

PROOF OF SERVICE BY ELECTRONIC POSTING

I, the undersigned, say:

I am not a party to the above case and am over eighteen years old. On March 8, 2022, I served true and correct copies of the foregoing document, by posting the document electronically to the ECF website of the United States District Court for the District of Nevada, for receipt electronically by the parties listed on the Court's Service List.

I affirm under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on March 8, 2022, at Las Vegas, Nevada.

/s/ Andrew R. Muehlbauer
Andrew R. Muehlbauer, Esq